

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ADOLFO BARRERA-GONZALEZ,**

**Defendant.**

**CASE NO. 8:08CR71**

# MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 22) issued by Magistrate Judge Thomas D. Thalken recommending denial of the motion to suppress filed by the Defendant, (Filing No. 12). The Defendant filed a statement of objections to the Report and Recommendation (Filing No. 23) as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a). A supporting brief was not filed.

The Defendant is charged in a two-count Indictment with being an illegal alien in possession of a firearm (Count I) and forfeiture (Count II). He seeks an order suppressing evidence obtained as a result of the vehicle stop on December 16, 2007, as well as the search of the Defendant's person, vehicle and residence.

Following an evidentiary hearing, Magistrate Judge Thalken issued a Report and Recommendation in which he concluded: officers had probable cause to stop the vehicle for excessively dark-tinted windows; Officer Baudler had probable cause to arrest the Defendant for driving with an expired insurance card and providing a false name; the arrest justified the search of the Defendant's person and vehicle, including the vehicle compartment; the Defendant's statements were voluntarily made after the administration of his *Miranda* rights; the Defendant and Maria Gonzalez consented to the search of the residence; and Maria Gonzales later withdrew her consent to search. however no evidence

was found after her withdrawal. On the basis of these determinations, Judge Thalken recommends that the Defendant's motion be denied.

### **STANDARD OF REVIEW**

Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a), the Court must make a de novo determination of those portions of the report, findings, and recommendations to which the Defendant has objected. The Court may accept, reject, or modify, in whole or in part, the Magistrate Judge's findings or recommendations. The Court may also receive further evidence or remand the matter to the Magistrate Judge with instructions.

### **STATEMENT OF FACTS**

The Magistrate Judge provided an account of the events relevant to the traffic stop, search, and arrest. The Court has considered the transcript of the hearing conducted by Judge Thalken (Filing No. 21). The Court also carefully viewed the evidence (Filing No. 17). Based on the Court's de novo review of the evidence and arguments, the Court adopts Judge Thalken's factual findings in their entirety.

### **ANALYSIS**

The Defendant objects to several of Judge Thalken's conclusions. However, the objections are stated in a conclusory manner without the bases for any of the objections or a brief as required by NECrimR 57.3(a). Paragraph 8 of the statement of objections states that a brief will be filed. However, a brief was not filed and the Defendant did not move for additional time to file a brief. With respect to the Defendant's objection that Judge Thalken did not reach conclusions regarding the colloquy relating to the Defendant's illegal status in the United States, that issue was not raised in the Defendant's motion to suppress and therefore is beyond the scope of the motion.

For these reasons, the Court declines to address the six objections raised by the Defendant to the Report and Recommendation. After a de novo review, the Court finds that the Report and Recommendation should be adopted in its entirety and the Defendant's motion to suppress should be denied.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 22) is adopted in its entirety;
2. The Statement of Objections to the Report and Recommendation (Filing No. 23) is denied; and
3. The Defendant's Motion to Suppress (Filing No. 12) is denied.

DATED this 2<sup>nd</sup> day of July, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge